

REMARKS

Claims 1, 4, 9, and 11-13 are pending in the present application. By previous amendment, Claims 2, 3, 6, 7, 8, 10, and 14 have been cancelled. By the present Response, Claim 1 is amended responsive to suggestions made by the Examiner in the Office Action dated December 24, 2002. Also by this Response, Claims 12 and 14 are cancelled. Care has been exercised to avoid the introduction of new matter, or placing before the Examiner any issues that were not previously addressed, or should have been addressed by the Examiner before the Final Office Action of December 24, 2002.

Entry of the amendment to Claim 1 is deemed proper after Final Rejection since the Examiner suggested the change to Claim 1 to better conform with the Declarations under Rule 132. These Declarations, in virtually identical form have been before the Examiner during the prosecution of the parent application. Likewise, the scope of Claim 1 has also been before the Examiner previous to the Response filed October 4, 2002. All of the issues having been defined and all of the information having been presented to the Examiner before the last office action (with the exception of minor additions to the Declaration under Rule 132), the purpose of this Response After Final is simply to obtain reconsideration, especially of the Declarations under Rule 132.

The proposed amendment was not previously submitted since the Examiner's full position regarding the relationship of Claim 1 and the Declarations was not expressed. This position should have been expressed previously by the Examiner but was not.

Applicant's claim numbering only extends to number 14 (cancelled by this Response). Applicant respectfully requests that the Examiner indicate the content of Claims 15 and 16, preferably by facsimile, so that Applicant can determine if claim renumbering has taken place, or if non-elected claims are involved.

The Examiner's objection to Claim 12 is addressed by the cancellation of that claim by this response. Likewise, the Rejection under 35 USC Section 112, is addressed by the fact that subparagraphs b and c were not eliminated from Claim 9, which was amended in the Response of October 4, 2002, by changes in only subparagraph a. The Examiner's construction of Claim 9 for the purposes of examination is correct, so that no further modification of Claim 9 is believed to be necessary.

The Examiner has maintained the Rejection under 35 USC Section 103 using the previously applied Collora et al., Christenson, II, and Bell patents. The Examiner concludes that the use of urine from only two does in estrus (the key and distinguishing aspect of the present invention) is obvious

from the disclosed use of urine from a single doe in estrus and urine from three or more does in estrus. The Examiner relies upon the fact that there is nothing to distinguish the use of urine from only two does in estrus from any other formulation.

This position is respectfully traversed on ground that there is a special and unexpected effect from using urine from only two does in estrus. This is exemplified by the Declarations under Rule 132, which the Examiner has dismissed as being non-persuasive. The Examiner's reasons for dismissing the subject Declarations as exposed are utterly confusing to the Applicant. In particular, the Examiner seems to believe that there has to be standardization of time, such as the length of time permitted for a buck to roam through an area. The Examiner also questions whether the same deer are used in different test environments, and if only the control area is penned.

This basis for dismissing the Declarations as being unpersuasive relies upon speculation, and so is inappropriate. It should be understood that all the deer subject to the observations described in the Declarations are wild animals, even those that are penned. The same animals are not moved from one test environment to another. As wild animals, they roam freely, even in large enclosures. Nothing was done either with penned deer or any of the deer in the open spaces to alter their behavior. Such attempts to control wild

animals are almost always futile, and would have rendered the observations useless. Applicant and the other Declarant would have no reason to do this. The Examiner's suggestion that such behavior may have taken place is inappropriate, and based solely on speculation. The only timeframes are the observation times described in the Declarations. The deer roam as they will, driven only by sexual impulses and other survival considerations. None of the deer were controlled at any time. The only "controlled" aspect of the observations was the use of tap water at one of the four scrapes in each test environment.

The results of the observations are overwhelming. Over ninety-four percent of the deer preferred scrapes having urine from only two does in estrus. Those that did not go to the two-doe scrapes had been driven away due to fights between two bucks, or to other unknown factors. None of the deer showed any preference for the other scrapes that did not contain the two-doe formulation of the present invention. This is overwhelming evidence of the surprising effectiveness of the present invention. It is this that renders the present claims to be non-obvious over any combination of the cited conventional art.

The Examiner has indicated that there is an inconsistency between the recitation of Claim 1 and the proof offered by the Declarations under Rule

132. In particular, the Examiner asserts that there is no evidence that the inclusion of other ingredients results in a formulation that does not work. To address this position, Claim 1 is amended by this Response to indicate that the operative ingredient is limited to the urine of only two does in estrus. However, other fillers or non-operative ingredients can be added without changing the effectiveness of the two-doe formula. The key operative aspect of the present invention is the urine of only two does in estrus. Tests have indicated that the urine of only one doe in estrus is not remotely as effective. Further, the urine of three or more does in estrus is also not as effective. The key is limiting the operative ingredient. Fillers such as buck urine, tarsal gland, preservatives and the like are generally meaningless since a buck in rut is attracted only by the urine of a doe in heat and not any of the other ingredients that may be put into deer lures.

Accordingly, the remaining claims of the present application are urged to be in condition for allowance, as is the rest of the application. Favorable reconsideration is respectfully requested.

Attorney Docket No.: 0132-005

Patent

Should the Examiner have any questions, comments, or suggestions, or should issues remain, the Examiner is respectfully requested to contact the undersigned by telephone for prompt and satisfactory resolution.

Respectfully submitted,



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